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*A Right to a Project of (African) Life: Boko Haram, ESC Classification of the Right to Education, and the Unjustifiability of Generationalising Human Rights*

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### **Abstract**

The constitutional non-justiciability of ESC rights in Nigeria, precludes judicial relief based on violations of the right to education (RtE) of Boko Haram. This paper questions the generational hierarchy of human rights, and the contextual classification of RtE as an ESC right. The violators of RtE who are non-state, as well as the content and benefits of the right, make this classification questionable. The international human rights law (IHRL) indicators of RtE therefore become redundant. This paper argues for an approach that focuses on vulnerable groups and de-emphasises generationalisation of human rights and unproven preconceptions of international relations. Utilising the jurisprudence coming out of the Inter-American Court of Human Rights which prescribes an overarching right to a 'project of life' this paper contends that a functional appropriation of culture allows IHRL to ensure local commitment for human rights as well as the fulfilment of local aspirations.

### **Introduction**

The rise of 'violent extremism', especially starting at the beginning of the 21<sup>st</sup> century, has been characterised by attacks on girls in education. In 2012, the Taliban made an assassination attempt against Malala Yousafzai, because of her advocacy for girl education. In 2014, the Taliban also attacked a school in Peshawar, Pakistan, killing 145 people, 132 of them students. In 2015, in Kenya, al-Shabab killed 150 students at Garissa University College. These attacks have been motivated by a desire to prevent 'western' education and ideas, especially for girls.

'Boko Haram' was founded in Nigeria in 2002. Its actual name, *Jamā'atu Ahlis Sunnah Lādda'awatih wal Jihad* can be translated to mean 'People Committed to the Propagation of

the Prophet's Teachings and Jihad.<sup>1</sup> The group's focus on attacking schools and preventing (particularly girl) education has earned them the designation Boko Haram. This is a phrase that is partly-Hausa and part-Arabic; it means 'Western Education is Forbidden'. Boko Haram (BH) gained worldwide notoriety for the kidnapping of over 200 school girls from Chibok in April of 2014.

One of the motivations for the group's attacks is to deprive girls of their right to education (RtE). RtE is protected in international human rights law (IHRL) by a diverse culmination of international, regional and national legislation, but most specifically by Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). As an ESC right, RtE, while ideologically and conceptually considered equal to civil and political rights, is hierarchically and historically less well-protected than civil and political rights. This is despite the contiguous nature of human rights generally and the indivisibility of human existence. This categorisation arises from static ideology about the relationship between IHRL and international relations. Jurisprudence from the Inter-American Court of Human Rights (IACrHR) illustrates how recognising that interfering with the RtE violates a cumulative 'right to a project of life' and increases the normative character of the RtE and ESC rights generally. This is coupled with the nature of African cultural jurisprudence that recognises a cyclic relationship between the duties and rights ascribed to community and individual. This article argues for a more systematic application of the 'right to a project of life' within IHRL generally and within the African Court on Human and Peoples' Rights. Incorporating culture and ideas about indigenous education into a right to a project of life de-emphasises the need for generationalising human rights and ensures communal ownership and adoption.

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<sup>1</sup> Other names include *Wilāyat al Sūdān al Gharbī* (The State of Western Sudan"), or the Islamic State's West Africa Province

## **The Education Situation in Northern Nigeria and Boko Haram**

BH was set up in Nigeria in 2002. Its primary goal is the Islamisation of Nigeria. After a period of been curtailed by governmental forces, that included the extra-judicial execution of BH's leader, the group experienced a resurgence in 2012.<sup>2</sup> BH's renaissance was characterised by an extreme increase in violence in the North of Nigeria, with increased targeting of schools and girls in education. In 2012 BH openly proclaimed, through pamphlets, sermons and videos, their intention of abducting and enslaving non-Muslim women and girls. The violence that following included the setting on fire of 29 students and a teacher in July 2013.<sup>3</sup> The violence resulted in the closure of 85 secondary schools in Borno state, and more than 120 000 students being denied schooling.<sup>4</sup> A number of teachers have been killed while teaching and in the presence of students.<sup>5</sup>

The most internationally noted violent act by BH was the abduction of over 200 schoolgirls from Chibok on the 15<sup>th</sup> of April 2014. This gained international attention with various world leaders and international personalities posing with and posting the hashtag #BringBackOurGirls.<sup>6</sup> However, there were several similar abductions both before and after the Chibok kidnap. According to Amnesty International, even though the actual number of girls and women kidnapped by BH is difficult to verify, the number of confirmable kidnappings, suggest that the overall number would be in excess of 2000.<sup>7</sup> These women and girls and forced to 'marry' BH members, convert to Islam, cook, work and clean; they are also subject to repeated sexual and physical violence.<sup>8</sup> Those abducted are kept in sparse living conditions

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<sup>2</sup> Maiangwa, Benjamin, and Daniel Agbiboa. "Why Boko Haram kidnaps women and young girls in north-eastern Nigeria." *Conflict Trends* 3 (2014): 52

<sup>3</sup> Ibid., 51

<sup>4</sup> Ibid; Amnesty International, "Keep Away From Schools Or We'll Kill You: right to education under attack in Nigeria", (Index: AFR/44/19/2013), October 2013, 14

<sup>5</sup> Ibid., 9

<sup>6</sup> Maiangwa and Agbiboa. "Why Boko Haram Kidnaps" 51.

<sup>7</sup> Amnesty International, "'Our Job is to Shoot, Slaughter and Kill': Boko Haram's reign of terror in north east Nigeria", 13 April 2015, AFR 44/1360/2015, 59.

<sup>8</sup> Ibid., 59 – 64.

with minimal access to good food and drinking water.<sup>9</sup> They were made to witness brutal mass murders such as beheadings, trained to shoot guns and detonate bombs.<sup>10</sup> In May 2015, hundreds of non-Chibok BH captives were freed, over 234 of whom were visibly pregnant and in need of psychological support and counselling.<sup>11</sup> The result of the foregoing is that abducted girls are deprived of education, while those who have not been directly affected by BH violence, are reluctant to attend educational institutions.

Article 7(1)(g) and (h) of the Rome Statute of the International Criminal Court (ICC) establishes as a crime against humanity, sexual violence against and persecution of an identifiable group, (identifiable, for example, by gender.) BH's anti-education attacks against girls are thus crimes against humanity. While BH has clearly contravened international criminal law, the group's activities highlight the limitations of the protection of RtE in IHRL.

Many reasons, e.g. poverty, have been adduced for the rise of extremism and the establishment of BH in Northern Nigeria. However, the historical context of the development of that area cannot be disregarded. The history of Islam in northern Nigeria and West Africa is not mainly nor primarily religious. Islamic scholars introduced Arabic literacy and writing techniques to the region and enabled accessible records of history to be made.<sup>12</sup> Prior to this time, the modes of education had been based on African traditional religions and instruction was solely oral. Elsewhere, Sankoré, the famous university at Timbuktu (in present day Mali, northwest of Nigeria) was set up around the fourteenth century; and teaching was based on Arabic scholarship and Islamic values.<sup>13</sup> More sophisticated methods of adjudication and political

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<sup>9</sup> Ibid., 69.

<sup>10</sup> Ibid., 70 – 72.

<sup>11</sup> Eleanor Goldberg, "Here's Who's Helping Hundreds of Pregnant, Rescued Boko Haram Kidnapping Victims," *Huffington Post*, last modified 05 June 2015. [http://www.huffingtonpost.com/2015/05/05/boko-haram-pregnant-victims\\_n\\_7215792.html](http://www.huffingtonpost.com/2015/05/05/boko-haram-pregnant-victims_n_7215792.html)

<sup>12</sup> Robin Hallett, *Africa since 1875: A modern history*. (University of Michigan Press, 1974), 254, 340; Basil Davidson, *West Africa before the Colonial Era: a history to 1850*. (Routledge, 1998) 154.

<sup>13</sup> Robert Birnbaum, "No World-Class University Left Behind," *International Higher Education* 47 (2015): 7; Bruce S. Hall, "The Question of 'Race' in The Pre-Colonial Southern Sahara." *the Journal of North african Studies* 10, no. 3-4 (2005): 341; Samuel A. Nyanchoga, "Politics of Knowledge Production in Africa: A critical

administration, were also established.<sup>14</sup> *Mai* (king) Dunama II (1221 – 1259 AD) of the Kanem-Bornu Empire, situated in roughly the same area that BH is in control of, attempted, unsuccessfully, to stamp out the traditional religions in favour of Islam due to the organisational and educational advantages that Mai Dunama believed Islam would bring to the region.<sup>15</sup> However, by the eighteenth century Quranic schools had become the main type of education in the area that would later be known as Northern Nigeria.

The current state of education in Northern Nigeria can be traced to methods of colonial administration, specifically indirect rule which caused stagnation of development in the north.<sup>16</sup> To appease the Caliphate (The Muslim spiritual leader in Sokoto), schools were not set up in the North; schools in Southern Nigeria were run by Christian missionaries whom the Muslim North did not approve of.<sup>17</sup> Though Islamic education continued in Quranic schools, by 1912, Southern Nigeria had 36,000 school students, while there were less than 1,000 in Northern Nigeria.<sup>18</sup> This misalignment has continued to exist and provides fertile ground for resistance to the introduction of educational institutions.

There is nothing in Nigerian or West African history to indicate abhorrence for education itself till the establishment of BH. What history, attributed statements and linguistic etymology suggest is that BH uses the resistance to cultural change as currency to recruit support for its

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reflection on the idea of an African university in sustainable development.” *Developing Country Studies* 4, no. 18 (2014): 58; Abdi O. Shuriye and Dauda Sh Ibrahim. "Timbuktu Civilization and its Significance in Islamic History." *Mediterranean Journal of Social Sciences* 4, no. 11 (2013): 696, 698; Cheikh Anta Diop, *Precolonial Black Africa*. (Chicago Review Press, 1988), 177 – 188; Itibari M. Zulu, "Critical Indigenous African Education and Knowledge." *Journal of Pan African Studies* 1, no. 3 (2006): 36.

<sup>14</sup> Davidson *West Africa* 154; Diop "Precolonial Black Africa." 124 – 126, 176.

<sup>15</sup> George T. Stride and Caroline Ifeka. *Peoples and Empires of West Africa: West Africa in history, 1000-1800*. (Africana Pub. Corp, 1971) 117.

<sup>16</sup> J. B. Webster and A. A. Boahen with M. Tidy, *The Revolutionary Years: West Africa since 1800*. (Essex, Longman, 1980) 201 – 202; Michael Crowder, *West Africa under Colonial Rule*. (Hutchinson, London, 1968) 219; Michael Crowder, *Colonial West Africa: Collected Essays*. (Psychology Press, 1978) 199

<sup>17</sup> Boahen, *Revolutionary Years*, 202.

<sup>18</sup> Hallett, *Africa*, 341.

cause.<sup>19</sup> ‘Boko’ originally meant fake but came to mean ‘Western’ education.<sup>20</sup> This indicates that ‘western’ education in that sense had some pejorative feelings attached to it. It should be noted that the schools set up in the north were primarily set up to enable communication between the coloniser and the colonised. In that sense they were mainly centres of instruction. However, they have gradually become educational institutions, though educational content in many African curricula still retains vestiges of post-coloniality.<sup>21</sup>

The nature of Nigerian community is such that the values that are achieved by education and ensure success in education, permeate cultural ideology; thus children of Nigerians in the diaspora have been proven to have higher than average performance in education.<sup>22</sup> Nevertheless, comprehensive acceptance of gender equality remains an uphill challenge for Africa and the effective recognition of human rights in the region.<sup>23</sup>

### **The Nature of the Right to Education in IHRL**

The right to education ensures everyone’s right to access good quality education, without discrimination or exclusion. In Nigeria, this right is primarily protected by the ICESCR. Other protections include Article 26 of the Universal Declaration of Human Rights, Articles 28 and 29 of the Convention on the Rights of the Child and Article 10 of Convention on the Elimination of All forms of Discrimination against Women. Regionally the African Charter on

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<sup>19</sup> Freedom C. Onuoha, "The Islamist challenge: Nigeria's Boko Haram crisis explained." *African Security Review* 19, no. 2 (2010): 54-67.

<sup>20</sup> Farouk Chothia, "Who are Nigeria's Boko Haram Islamists?" 4 May 2015. <http://www.bbc.co.uk/news/world-africa-13809501>.

<sup>21</sup> Mwenda Ntarangwi, "The Challenges of Education and Development in Post-Colonial Kenya." *Africa Development* 28, no. 3-4 (2003); Cameron McCarthy et al "Afterword: Contesting culture: Identity and curriculum dilemmas in the age of globalization, post-colonialism, and multiplicity." *Harvard Educational Review* 73, no. 3 (2003): 449-465. Ali A Abdi, "Intensive Globalizations of African Education," in *Critical Perspectives on International Education*, ed. Ali A Abdi (SensePublishers, 2013).

<sup>22</sup> Dolapo Adeniji-Neill, "Omoluàbí: The Way of Human Being: An African Philosophy’s Impact on Nigerian Voluntary Immigrants’ Educational and Other Life Aspirations." *Ìrìnkèrindò* (2011): 1, 6

<sup>23</sup> Mirna E. Adjami, "African courts, International Law, And Comparative Case Law: Chimera or emerging human rights jurisprudence." *Michigan Journal International Law* 24 (2002): 152.

Human and People's Rights provides for RtE in Articles 17 and 25, RtE is also protected in Article 11 of the African Charter on the Rights and Welfare of the Child (ACRWC) and Article 12 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

According to the CESCR's General Comment on RtE, education is a means of attainment of other rights; it is a way of 'safeguarding children from exploitative and hazardous labour and sexual exploitation...'.<sup>24</sup> The Committee on the Rights of the Child stated that education should reflect a balance between promoting the physical, mental, spiritual and emotional aspects and the intellectual, social and practical dimensions of education.<sup>25</sup> The purpose of education therefore is not just mere knowledge, but the development of the community as well. RtE has been described as an empowerment right,<sup>26</sup> this means that someone who is educated, is able to take control of her life and contribute to the development of her state.<sup>27</sup> The benefits of civil and political rights are not achieved without the fulfilment of RtE; education also ensures the fulfilment of other ESC rights.<sup>28</sup>

The indicators proposed by the CESCR to measure governmental fulfilment of the right to education include: the provision of free primary education; availability of functional education, access to educational institutions; acceptability of the form and substance of education programmes; and adaptability of education.<sup>29</sup> Coupled with quantitative data, such as the ratio of a state's youth in education, and the portion of state resources allocated to education, the foregoing elements are used to measure the fulfilment of RtE within a state.<sup>30</sup> Process and

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<sup>24</sup> CESCR General Comment No.13: The right to education (Article 13), 8 December 1999, E/C.12/1999/10.

<sup>25</sup> Rhona Smith, *Textbook on International Human Rights*. (Oxford University Press, 2007) 292.

<sup>26</sup> Klaus D. Beiter, *The Protection of the Right to Education by International Law*. (BRILL, 2005) 56.

<sup>27</sup> Fons Coomans, "Clarifying the Core Elements of the Right to Education." *Framework* 10 (1988): 214

<sup>28</sup> *Ibid.* 215

<sup>29</sup> CESCR General Comment No.13; Sital Kalantry, Jocelyn E. Getgen, and Steven Arrigg Koh, "Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A focus on the right to education in the ICESCR." *Human Rights Quarterly* 32, no. 2 (2010): 278.

<sup>30</sup> Beeckman, Katrien. "Measuring the Implementation of the Right to Education: educational versus human rights indicators." *The International Journal of Children's Rights* 12, no. 1 (2004): 72, 73, 77.



outcome indicators are used to determine the suitability of laws and policies and consequently the resulting effect of these laws and policies.<sup>31</sup>

The IHRL framework, especially its key component of universality of human rights, relies heavily on the principle that the family of humanity share common values such as dignity, respect, liberty, justice, and equality;<sup>32</sup> further, each individual is entitled to a status of ascriptive value (human dignity) that allows her to develop her life free from interference.<sup>33</sup> However, the different ways in which these common values play out resulted in the bifurcation of the human rights covenants into two separate instruments in 1966.<sup>34</sup> One covenant contained civil and political rights requiring non-interference from the state and its agents – e.g. the right to life, liberty and freedom of expression. The other covenant contained economic, social and cultural rights, requiring the state to fulfil – e.g. the right to education, health, and housing. The division was partly based on the presumption that states were either capitalist or socialist, though many African and Asian states are neither. The influence of sub-Saharan Africa at the UN was demonstrably weak in 1966, at the time many of the African states were about 6 years old, with a non-residual sovereignty<sup>35</sup>. Had the influence of African and Asian states been stronger, there may have been an even unnecessarily wider dispersion of influences on the human rights covenants. The Cold War caused debate about the two categories of rights to turn into an eristic ideological minefield,<sup>36</sup> under which individuals deserving of protection were

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<sup>31</sup> Kalantry et al, “Enhancing Enforcement”, 282.

<sup>32</sup> Jack Donnelly, "Cultural Relativism and Universal Human Rights." *Human Rights Quarterly* 6, no. 4 (1984): 405.

<sup>33</sup> Freeman, Michael. "The Philosophical Foundations of Human Rights." *Human Rights Quarterly*, 16, no.3 (1994): 505 - 506

<sup>34</sup> Zehra F. K. Arat, "Forging a Global Culture of Human Rights: Origins and prospects of the international bill of rights." *Human Rights Quarterly* 28, no. 2 (2006): 428 – 430; Egbert W. Vierdag, "The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights." *Netherlands Yearbook of International Law* 9 (1978): 84; Beiter, *Protection of the Right*, 50 – 51.

<sup>35</sup> Nii Lante Bruce-Wallace, "Africa and International Law—the Emergence to Statehood." *The Journal of Modern African Studies* 23, no. 04 (1985): 587; Charles H. Alexandrowicz, "New and Original States: The Issue of Reversion to Sovereignty." *International Affairs* 45, no. 3 (1969): 473; Jackson, Robert H. "Quasi-states, dual regimes, and neoclassical theory: international jurisprudence and the Third World." *International Organization* 41, no. 4 (1987): 541.

<sup>36</sup> Beiter, *Protection of the Right*, 51; Kalantry et al, “Enhancing Enforcement”, 264.

trampled. African states had yet to develop state ideologies and were stuck in the middle of a power tussle. Economic paucity caused many to plead that insufficient resources would delay implementation of human rights, specifically ESC rights.

Even though the equality of the human rights covenants has been consistently underlined, the nature of the rights in each charter means that many developing nations view ESC rights as non-justiciable and dependent on available resources.<sup>37</sup> The legal status of ESC rights have also been considered uncertain.<sup>38</sup> Therefore, protection of ESC rights are not as advocated as the protection of civil/political rights.<sup>39</sup> It has been argued that ESC rights are not strictly ‘legal’ rights but ‘programmatic’ state obligations, because the objectives and approaches to enforcement are not determinable in legal terms.<sup>40</sup> ESC rights like RtE thus receive reduced protection in practice.

Nonetheless, because, the core normative content of the ‘right’ involves the obligation of the state to provide education and ensure access, Coomans argues that failure to perform this obligation is justiciable.<sup>41</sup> While Nigeria has ratified the ICESCR, RtE is not included in the fundamental rights in the Nigerian Constitution. It is contained in Section 18 of the Constitution as part of the aspirational ‘Fundamental Objectives and Directive Principles of State Policy’ and were generally believed to be non-justiciable. However, the ECOWAS Court, in *SERAP v Nigeria*, in response to a preliminary objection, decided whether or not RtE was justiciable within.<sup>42</sup> The Court accepted the plaintiff’s argument that the justiciability of RtE arose from

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<sup>37</sup> Craig Scott, "Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights." *Osgoode Hall Law Journal* 27 (1989): 794; Beiter, *Protection of the Right*, 52; Kalantry et al, "Enhancing Enforcement", 256.

<sup>38</sup> Vierdag, "Legal Nature of Rights", 104

<sup>39</sup> Scott Leckie, "Another Step towards Indivisibility: Identifying the key features of violations of economic, social and cultural rights." *Human Rights Quarterly* 20, no. 1 (1998): 86, 94; Kalantry et al, "Enhancing Enforcement", 255.

<sup>40</sup> Vierdag, "Legal Nature of Rights", 104

<sup>41</sup> Coomans, "Clarifying the Core Elements", 224

<sup>42</sup> *Socio-Economic Rights and Accountability Project (SERAP) v. Nigeria*, Judgment, ECW/CCJ/APP/0808 (ECOWAS, Oct. 27, 2009)

the jurisprudence of the ACHPR and the ICESCR, rather than the Nigerian Constitution.<sup>43</sup> The court concluded that RtE was therefore justiciable within Nigeria. This decision has, as yet, not resulted in any ensuing litigation against the government.

Writings that contest the equality of the two covenants ignore the fact that they are both equal treaties, signed into law in exactly the same way, for the purpose of ensuring human dignity.<sup>44</sup> Furthermore, there is a tendency to conflate the methods of national law with international, even though these areas of law work differently; the requirements for normativity of international law are not as rigidly dependent on enforceability or available remedies, but on the legally binding nature of duly signed and ratified treaties.<sup>45</sup> Writings of scholars such as Vierdag and Cranston which question the legality of ESC, raise such questions from a singular perspective of human existence, however, the value and classification of human rights are better appreciated in the deprivation. Different states have different histories of deprivation, the aim of IHRL is to universalise overall human rights protection, irrespective of state ideology, finances or history.

To underestimate or deny the inherent legality of RtE due to constraints of temporal and financial achievement,<sup>46</sup> is to misconstrue the nature of rights and states and thus devalue the aims IHRL. IHRL is in itself aspirational, without violations there would be no need for IHRL. Violations of all human rights can arise from direct malicious deprivation or state incapacity. The ability to protect human rights within a state, depends largely, on the internal situation of a state. The right to fair trial, for example, can only be achievable where there is judicial infrastructure and personnel,<sup>47</sup> for a state without the required judicial personnel, the civil/political right to fair trial would be aspirational. A classic example of this can be seen in

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<sup>43</sup> Ibid., paragraph 17 - 19

<sup>44</sup> Beiter, *Protection of the Right*, 65

<sup>45</sup> Ibid., 64

<sup>46</sup> Ibid., 57

<sup>47</sup> Ibid., 56

the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) which needed the financial assistance of the UN, because Cambodia lacked “*a trained cadre of judges, lawyers and investigators; an adequate infrastructure; and a culture of respect for due process. ... the result of the mass killings during the Khmer Rouge.*”<sup>48</sup> Thus the aspirational nature of a right depends on the nature and extent of deprivation, the needs of the community as well as the importance of the right.

Notably, RtE is at the epicentre of a network, if other rights are denied children; they will consequentially be deprived of RtE, and vice versa; poor education in a community or nation will be reflected by poverty, underdevelopment and conflict.<sup>49</sup> This is evidenced in the history of northern Nigeria. In essence, because RtE is essential to the system of human rights; only the violation of the right to life has a greater impact on the individual and her society. By not protecting RtE a state is depriving *itself* of the right to development, democratic governance and ultimately the capacity to protect all human rights.<sup>50</sup> The right to development,<sup>51</sup> and the right to a clean environment are considered to be third generation rights, but logically feed into the cycle of interdependence of human rights.<sup>52</sup>

Ultimately the categorisation of rights arises from static beliefs about developing countries, especially in Africa. Thus one of the major conceptual differences between ESC rights and civil/political rights, arises from fixed ideas about the relationship between individuals and their states. The IHRL framework is meant to serve to protect citizens from violations of their human rights perpetrated by the state or its agents. To this end civil/political rights typically

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<sup>48</sup> Thomas Hammarberg, "How the Khmer Rouge Tribunal Was Agreed: discussions between the Cambodian government and the UN." *Searching for the truth Documentation Center of Cambodia* (2001). [http://www.dccam.org/Tribunal/Analysis/How\\_Khmer\\_Rouge\\_Tribunal.htm](http://www.dccam.org/Tribunal/Analysis/How_Khmer_Rouge_Tribunal.htm)

<sup>49</sup> Shedrack C. Agbakwa, "Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights." *Yale Human Rights & Development Law Journal* 5 (2002): 182

<sup>50</sup> Smith, *International Human Rights* 342; Beiter, *Protection of the Right*, 56 - 58

<sup>51</sup> UN General Assembly, *Declaration on the Right to Development*, 4 December 1986, A/RES/41/128

<sup>52</sup> Craig Scott, "Reaching Beyond (without abandoning) The Category of 'Economic, Social And Cultural Rights'" *Human Rights Quarterly* 21, no 3 (1999): 643 – 644; Beiter, *Protection of the Right*, 65

mandate the state to avoid violation of rights irrespective of the level of development, while ESC rights mandate the state to engage in the fulfilment of rights dependent on and relative to the state's level of development.<sup>53</sup> Thus civil/political rights are said not to require the input of state resources, the fulfilment ESC rights depend on them. Additionally, due to the fact that IHRL developed almost as a direct reaction to the civil/political atrocities of the Second World War, ESC rights, though included in the pantheon of rights, fell below the radar of political will.<sup>54</sup>

However, the nature of the violation of RtE perpetrated by BH, is outside the contemplation of the General Comment of the CESCR or the indicators recommended for measuring its fulfilment. Furthermore, questioning the legality of the right discounts the benefit and nature of rights in developing nations,<sup>55</sup> thus misunderstanding its relevance to the interconnectivity of human existence. This is because RtE, as introduced in the Universal Declaration of Human Rights (UDHR) and elaborated upon in the ICESCR and the CESCR's general comments, was formulated by states who already had functional, official and relatively similar educational systems.<sup>56</sup> The content of the right and the comments do not give much room for indigenous education, allowing opponents of education such as BH to interpret RtE to mean, a right to 'Western' education, rather than a right to quality education capable of ensuring personal development.

It is pertinent to recall that when 'western' education was introduced to West Africa, it was a tool of conformity and control. Nigeria, a former British colony is surrounded by former French colonies. Most of Muslim West and North Africa still retain the evidence of French and British colonial practices. French colonialism de-emphasized the African identity of their subjects

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<sup>53</sup> Vierdag, "Legal Nature of Rights", 81, 82

<sup>54</sup> Beiter, *Protection of the Right*, 50

<sup>55</sup> Cranston, Maurice. "Are There Any Human Rights?" *Daedalus* 112, no. 4 (1983): 13.

<sup>56</sup> Vierdag, "Legal Nature of Rights", 87

while not allowing them to become sufficiently French.<sup>57</sup> It deconstructed or disregarded the traditional structures of pre-colonial government in favour of ‘civilised’ French governance.<sup>58</sup> They did this by introducing French culture, language, history and law through education to their colonies.<sup>59</sup> French and British colonial governments mandated local farmers to cultivate certain food crops especially when these food crops were valued or needed in the mother country.<sup>60</sup> Thus, the colonial state controlled commerce in ways that would not have been accepted in Europe.<sup>61</sup> Western education was provided for the sole purpose of educating West Africans to be able to converse with or work for colonial superiors.<sup>62</sup> More refined education than this was left to the missionaries who did not always have the means to provide a higher level of education.<sup>63</sup> The whole of French West Africa (approximately 4.7m km<sup>2</sup>)<sup>64</sup> in 1934 had 278 schools and 22,323 students.<sup>65</sup> Colonial governments spent very little on health; in 1936, Nigeria (0.9m km<sup>2</sup>) had only 3,503 beds in government hospitals and the Gold Coast (Ghana [0.2m km<sup>2</sup>]) had 995.<sup>66</sup> The post-colonial governments have followed the pattern of what was seen done rather than what they have been told to do, by according limited credence to education and other ESC rights.

Furthermore, considering the fact that; Islamic education existed in Northern Nigeria long before, ‘western’ education,<sup>67</sup> BH is converting their abductees to Islam through Quranic teaching, a purely legalistic argument denying the violation of RtE is open to BH. This

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<sup>57</sup> Boahen, *Revolutionary Years*, 215

<sup>58</sup> Crowder, *West Africa under Colonial*, 189, 191, 192

<sup>59</sup> Boahen, *Revolutionary Years*, 215; Crowder, *Colonial West Africa*, 128

<sup>60</sup> Crowder, *West Africa under Colonial*, 274

<sup>61</sup> *Ibid.*, 275

<sup>62</sup> *Ibid.*, 284, 374

<sup>63</sup> *Ibid.*, 284 – 285

<sup>64</sup> United Nations Office for West Africa, “Urbanization and Insecurity in West Africa: Population Movements, Mega Cities and Regional Stability” UNOWA Issue Papers, Published by the United Nations Office for West Africa. Published October 2007. 13

<sup>65</sup> Crowder, *West Africa under Colonial*, 375; Hallett, *Africa*, 308 – 309; UNOWA, “Urbanization”, 13

<sup>66</sup> Crowder, *West Africa under Colonial*, 327

<sup>67</sup> Bravmann, René A. *Islam and tribal art in West Africa*. (No. 11. CUP Archive, 1980) 8 – 10

argument however, cannot possibly take into account the nature and core content of education required to fulfil the standards of RtE and the essence of human dignity.

Human dignity is one of the key driving impetuses of the IHRL movement. Human dignity as a concept transcends but does not obliterate the categorisation of rights, even though civil/political rights have been argued to be closer related to concepts of human dignity than ESC rights.<sup>68</sup> The activities of BH cast a great deal of doubt on this assertion. Again, the critics of ESC rights presuppose that human existence is uniform, assuming that the active denial of RtE would merely result in the victim being uneducated. Other than the state not providing free primary education or ensuring availability, accessibility, acceptability and adaptability, there is no presumption upon *how* this deprivation would be occasioned, or *who* would be causing it. In practice the deprivation of education can form part of a complex network of deprivations. The idea that human rights theory is solely about the relationship between the state and the individual, and a list of what the government must do and must not do, ignores the reality of non-governmental forces such as BH, and the existence of states with limited sovereign control over their own territory. The conflict in Darfur highlights this where a protracted conflict caused government spending to be diverted to the military from health or education.<sup>69</sup>

The collective classification of ESC rights as aspirational, government-focused and non-justiciable, wrongly implies that all the rights in the ESC Covenant are homogenous.<sup>70</sup> The designation of ESC already suggests that the rights could be economic or social or cultural. For example the right to strike<sup>71</sup> does not require the state to do anything, while RtE does. These conceptualisations and categorisations of rights rely on a strict Westphalian understanding of the relationship between individual and state and a linear concept of state development. ESC

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<sup>68</sup> Beiter, *Protection of the Right*, 59

<sup>69</sup> Nicholas Shalita, "The Sudan Conflict (1983–)." *The True Cost of Conflict: Seven Recent Wars and Their Effects on Society*. London (1994). 139, 140

<sup>70</sup> Vierdag, "Legal Nature of Rights", 102

<sup>71</sup> Article 8 ICESCR

rights are only aspirational where a state is taking a unidirectional journey through identifiable, fixed advancing points of development. Aspiration suggests time allowances that cannot be properly mapped onto the vicissitudes that characterise life within a state and the vagaries and fluctuations of national development. Consequently, ESC rights can only be divorced from civil/political rights where the relationship between individual and state is not diluted by influential cultural communities, powerful non-state actors, direct international community activity and countless other 'others', which characterise the existence of many developing states.

The state of education in Nigeria is further complicated by the effects of the nature of cultural ideology and communal activity in Nigeria, as well as state incompetence which has caused the individual and the community (and not the state) to take most responsibility for the provision of ESC rights.<sup>72</sup> The differing types of human rights does not properly take into account the fluidity of human existence on the local, national and international spheres. Fundamentally, understanding and categorisation of rights are very sharply affected by mistaken presumptions about the internal workings and needs of states<sup>73</sup> and our ideas about linear development of states. The assumption that developing states must develop politically and economically in the same manner as states that are already developed, is not supported by current affairs or international relations or the history of developed states. The differing socio-economic paths taken by China, Brazil and South Africa indicate the non-linearity of state transformations.

The foregoing has allowed the Nigerian government, by mistakenly understanding RtE to mean a right to 'available' education to not significantly improve the educational system in the north

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<sup>72</sup> Adeniji-Neill, "Omólúàbí", 6

<sup>73</sup> Beiter, *Protection of the Right*, 52, 57



of Nigeria.<sup>74</sup> This neglect provides fertile ground for ideologies, such as those motivating BH, to grow. Also problematic, in this specific case, is the issue of available remedies. While one of the key factors driving BH is to deprive girls of the right to education, merely remedying that singular violation will be insufficient.

Degenerationalisng human rights by combining the covenants into one document, however, does not address the fact that some rights would be enforceable immediately and some would be dependent on the level of development.<sup>75</sup> Though which rights those would be depend not, on the current classification, but the internal state situation. The right to development itself has been described as a synthesis right that integrates all human rights irrespective of category.<sup>76</sup> Nevertheless, the right to development may be considered to be both a group and an individual right needed by less developed states but not to a great degree by developed states. ESC rights remain difficult to enforce; this cannot be cured by merely combining the covenants.<sup>77</sup> Such a merger would not answer the questions posed by so-called third generational rights (like the right to development) as they would fall outside the covenants. A solution may be found in the jurisprudence of the Inter-American Court of Human Rights (IACrtHR) and its formulation of a ‘right to project of life’.

### **A Right to a Project of Life**

A right to harbour a ‘project of life’ has been described as a canopy approach that incorporates component rights based on the core idea of human of dignity.<sup>78</sup> This approach achieved

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<sup>74</sup> Vierdag, "Legal Nature of Rights", 90

<sup>75</sup> Ibid., 84

<sup>76</sup> Beiter, *Protection of the Right*, 70

<sup>77</sup> Cranston, "Are there any human rights? 8

<sup>78</sup> Aoife Nolan, "Addressing Economic and Social Rights Violations by Non-State Actors through the Role of the State: A comparison of regional approaches to the ‘obligation to protect’." *Human Rights Law Review* 9, no. 2 (2009): 233

prominence in the IACrTHR as a generous reading of the protection of the right to life. Article 4(1) of the Inter-American Convention on Human Rights (IACHR) protects the right to life: *“Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”*

The right to respect for life has been used by the IACrTHR to adjudicate upon the violation of both ESC and civil/political rights, based on the argument that the rights subject to adjudication were rights necessary for the advancement of a dignified life.<sup>79</sup> The court to that extent by broadening the understanding of the right to life takes a huge step towards normativisation of human dignity. Several cases before the IACHR considered the cumulative violation of rights such as to housing, fair trial, education and food. The ‘right to a life-plan’ was first used by the IACrTHR, in *Loayza-Tamayo v. Peru*.<sup>80</sup> In this case, after a lack of due process in investigations and judicial procedure, Peru arrested and detained Professor Maria Elena Loayza Tamayo on suspicion of terrorism, her right to fair trial was not upheld. In addition to this, the state kept her in detention after acquittal and she was unable to communicate with family and friends. The IACrTHR held she had been wrongly subjected to abuse that served to ‘radically alter’ the course her life was on, and prevent ‘her from achieving her goals for personal and professional growth’, thus resulting in ‘irreparable damage to her life’.<sup>81</sup>

The next case to adopt this approach was the ‘*Street Children*’ (*Villagran-Morales et al.*) v. *Guatemala*.<sup>82</sup> A petition was filed against the State of Guatemala, alleging the kidnapping, torture and death of four children and the murder of a fifth, by members of security forces. The court, using the provisions of Article 4 in their argument, held that the children had a right to

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<sup>79</sup> Tara J. Melish, "The Inter-American Court of Human Rights: Beyond Progressivity," in *Social Rights Jurisprudence: Emerging trends in international and comparative law*, ed. Malcolm Langford. (Cambridge University Press, 2008) 388.

<sup>80</sup> Inter-American Court of Human Rights (IACrTHR), 1 July 2011

<sup>81</sup> *Loayza-Tamayo v. Peru, Reparations*, Judgment of Nov. 27, 1998, Inter-American Court of Human Rights (IACrTHR) paragraphs 148, 149, 150, 152

<sup>82</sup> Judgment of May 26, 2001, Inter-Am Ct. H.R.

access to ‘minimum conditions for a dignified life’.<sup>83</sup> These minimum conditions include food, clothing and housing. The court argued that every child has the right to ‘harbour a project of life’ which, with the cooperation of the state, should be developed for the child’s ‘personal benefit and that of the society’.<sup>84</sup>

However, it was the advisory opinion of *Juridical Status and Human Rights of the Child*<sup>85</sup> that definitively linked, Article 4, the right to a project of life, and the right to education. The court asserted that in terms of Article 4, children were entitled to the right to conditions to develop a decent life, these conditions include the provision of ESC rights.<sup>86</sup> Citing the International Conference on Population and Development’s statements on RtE, specifically for development for girl children, the IACrHR emphasised the importance of this right to the court’s formulation of a project of life.<sup>87</sup> According to the court, RtE ‘contributes to the possibility of enjoying a dignified life’ and preventing ‘unfavourable situations for the minor and for society itself.’<sup>88</sup> The court in its advisory opinion emphasised the specific vulnerability of children and the need for state defence of their rights, to transcend this vulnerability, enjoy a decent life and contribute to the development of society.<sup>89</sup>

Following its advisory opinion the IACrHR has continued to utilise the right to a project of life in its cases. The case of ‘*Panchito López*’<sup>90</sup> was a case considering state responsibility for death and injuries suffered by 4000 children who were inmates in a juvenile re-education centre in Paraguay between 1996 and 2001. The centre was overcrowded and the children were subject to degrading treatment. Furthermore, there were no educational facilities; several

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<sup>83</sup> Ibid., paragraph 7

<sup>84</sup> Ibid., paragraph 191

<sup>85</sup> Advisory Opinion OC-17/02, August 28, 2002, Inter-Am. Ct. H.R.

<sup>86</sup> Ibid paragraphs 80 – 81

<sup>87</sup> Ibid., paragraphs 83 – 84

<sup>88</sup> Ibid., paragraph 84

<sup>89</sup> Ibid., paragraph 86, 88

<sup>90</sup> “*Juvenile Reeducation Institute*” v. *Paraguay*, Judgment of September 2, 2004, Inter-American Court of Human Rights (IACrHR)

children died in fires, the severity of which was compounded by the overcrowding of the centre. The court held that a correct interpretation of Article 4 meant that by not providing the inmates of the centre with an adequate education, their right to life was violated as the detention had the potential to ‘destroy their life plans.’<sup>91</sup>

In the case of the *Yakye Axa Indigenous Community v. Paraguay*,<sup>92</sup> the court tied Article 4 to the state’s positive and negative obligations to provide people with minimum conditions for a decent life.<sup>93</sup> The court held that the State had violated Article 4 by failing to adopt essential positive procedures to ensure that members of an indigenous community lived under dignified conditions while they lacked access to their land. During this time the community had insufficient access to food, health services and education. The canopy argument and wide use of Article 4 was also adopted in the cases of *Xákmok Kásek Indigenous Community V. Paraguay*<sup>94</sup> where the court recognised a link between land use and continued existence of a community when the land in question is used for economic, cultural, social and religious purposes. Furthering its jurisprudence on the right to a project of life, the court recognised a link between the right to life and ESC rights like the right to water, education, and food.

There has been understandable academic caution in relation to the IACrHR’s tendency to blur the lines between ESC rights and civil/political rights; conceptually, the reasons for different standards for different categories of rights arise from the differing nature of rights generally and the requirements for their fulfilment.<sup>95</sup> This article has argued that these differences are not as clear-cut as academic literature would have us believe and the canopy approach may stop justice being sacrificed on the altar of academic ideological stagnation. Admittedly, the canopy approach of subsuming various rights under Article 4 IACHR, may not be necessary in all

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<sup>91</sup> Ibid., paragraphs 135 – 136, 161, 172, 174, 253

<sup>92</sup> IACrHR, Judgment of June 17, 2005 (Merits, Reparations and Costs)

<sup>93</sup> Ibid., paragraphs 81 - 98

<sup>94</sup> IACrHR, Judgment Of August 24, 2010 (Merits, Reparations, and Costs)

<sup>95</sup> Melish, “Inter-American Court”, 405 – 406

situations. For example the IACrtHR in *Girls Yean and Bosico v. Dominican Republic*<sup>96</sup> was faced with Dominican state policy which denied documents such as birth certificates to Dominicans of Haitian descent, ultimately refusing recognition of nationality and the ability to go to school. The court failed to mention RtE in its judgment. Taking the previous jurisprudence of the court into account, there seems to be the possibility of phasing out certain rights and their necessary protections by subsuming them under provisions such as Article 4.<sup>97</sup> For this reason, care should be taken not to normative the right to a project of life; it should remain an approach.

Nevertheless, the nature of the states, their educational programmes and their human rights protection systems may suggest a pattern within which a right to a project to life may operate. The cases before the IACrtHR in which the right to a project of life has been adopted all involved developing states with developing human rights protection systems and developing state infrastructure. A developing state such as Nigeria may benefit from a similar approach. The caveats are to ensure that this macro-level approach does not de-emphasise the importance of micro-level approaches. Ideally and pragmatically, the big-picture should not be ignored as macro-level, situational and nation-specific lessons need to be learnt. This is increasingly relevant to states in Africa, which are described as developing, and have an insufficiently-researched cultural ideology or educational philosophy.

### **RtE, the IACrtHR and a Project of ‘African’ Life**

The jurisprudence of the IACrtHR established the principle that the right to (a project of) life could mean the right to a dignified life whose dignity is achievable by fulfilling RtE among other things. What would this mean for RtE in Africa? Scholars such as Mutua and An-Na'im argue that without the inclusion of the African perspective in IHRL, the human rights mosaic

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<sup>96</sup> IACrtHR, Judgment of September 8, 2005 (Preliminary Objections, Merits, Reparations and Costs)

<sup>97</sup> Melish, “Inter-American Court”, 406 – 407

is incomplete.<sup>98</sup> Englebert blames the retardation of economic growth and inefficient state capacity in Africa on the tension between current state institutions and pre-colonial ones that were not completely effaced by colonialism.<sup>99</sup> He believes that because this incongruence is unresolved and unaddressed, the legitimacy of African states will automatically come into question when a group requests even the smallest change; external reform ventures will also prove futile.<sup>100</sup> The present situation perpetuates a myth of inferiority and triviality of indigenous knowledge and value. This allows groups such as BH to thrive, feeding as they do on the never-ending African quest for preservation of a particular identity, disregarding the fact that identity evolves and does not stagnate.

Assumptions and unfounded recommendations are thus made about the aspirations of indigenous groups by everyone except the group itself. Collective society has to be cognisant of multifaceted aspirations to achieve uniform development.<sup>101</sup> While the basic unit of society in some cultures is the individual, in many African cultures it is the extended family.<sup>102</sup> African indigenous education emphasises training individuals to contribute to the development of their community and the benefits of a cohesive communal life.<sup>103</sup> Conversely colonial education emphasised the value of the individual and deemphasised the importance of community and culture.<sup>104</sup> Where education seems to isolate the individual from her community, education and its proponents become a communal enemy. These incongruences as well as the colonial purposes of education result in an irrelevant curricular – Shakespeare taught without any

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<sup>98</sup> Makau Wa Mutua, "Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties, The." *Virginia Journal of International Law*, 35 (1994): 344; Abdullahi A. An-Na'im, "Problems of Universal Cultural Legitimacy for Human Rights." *Human Rights in Africa: Cross-cultural perspectives* (1990): 339.

<sup>99</sup> Pierre Englebert, "Pre-Colonial Institutions, Post-Colonial States, and Economic Development in Tropical Africa." *Political Research Quarterly* 53, no. 1 (2000): 10 - 13

<sup>100</sup> *Ibid.*, 12 – 13, 29

<sup>101</sup> Josiah A.M. Cobbah, "African Values and the Human Rights Debate: an African perspective." *Human Rights Quarterly* 9, no. 3 (1987): 319.

<sup>102</sup> *Ibid.*,

<sup>103</sup> David C. Woolman, "Educational Reconstruction and Post-Colonial Curriculum Development: A comparative study of four African countries." *International Education Journal* 2, no. 5 (2001): 30

<sup>104</sup> *Ibid.*,

cultural or historical context – inherited inadequate teaching methods, and disengaged cohorts of students. The focus on English, French and Portuguese as languages of instruction and national communication has also contributed to the disappearance of African languages and customs. Adegbija notes ‘*Over 90% of African languages,...exist as if they don’t really exist; they live without being really alive. Living functional blood is being sucked out of them...*’<sup>105</sup> these problems are compounded by the lack of curriculum development. Nigeria has had limited governmental educational policies, very little curriculum revision and reduced spending on education.<sup>106</sup>

In order to solve some of these problems, culture could be appropriated as a functional tool to help in the promotion and entrenchment of human rights.<sup>107</sup> In this sense, culture would be used as a practical bridge between concept and practice, a conduit through which human rights can be implanted within indigenous consciousness without diluting the content of human rights or community feeling. Currently, human rights practitioners often see indigenous culture as a brick wall they must break down, without attempting to understand the cultural philosophy. The response to this approach is resistance and stagnation of culture; yet culture by its nature evolves.

Understanding culture and using this understanding to promote RtE would involve increased research into African cultural philosophy. The advantages to this are manifold; where resistance to the IHRL framework is reduced, populations are more likely advocate for the protection of their own human rights, when those human rights can be clearly seen to be closely

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<sup>105</sup> Efurosibina Adegbija, "Saving Threatened Languages in Africa: A case study of Oko." In *Can Threatened Languages Be Saved?* ed. Joshua A. Fishman, (Clevedon UK: Multilingual Matters Inc. 2001) 284; Batibo, Herman. *Language Decline and Death in Africa: Causes, consequences, and challenges*. (Vol. 132. Multilingual Matters, 2005) 26 – 27.

<sup>106</sup> Woolman, "Educational Reconstruction", 34

<sup>107</sup> Donnelly, Jack. *Universal Human Rights in Theory and Practice*. (Cornell University Press, 2013) 112; Manfred Hinz, *Human Rights between Universalism And Cultural Relativism? The Need for Anthropological Jurisprudence in the Globalising World* (2009) 12

related to their communal values;<sup>108</sup> this prevent governments from abdicating their duties. African content and perspectives would then be included in educational curricular. The practical benefits of functional appropriation of culture include ensuring the political participation of the populace and guaranteeing that local traditions become part of the national governance;<sup>109</sup> resistance to change will reduce as the people will be the drivers of the change. The texture of international community life will also become richer as a result. To this end African systems of indigenous education should be investigated.

In the north of Nigeria and the Northern parts of West Africa, there exists two parallel systems of education: the ‘formalised’ schools that are directly descended from the school introduced by missionaries supported by colonial administration; and the Quranic schools connected to the introduction of Islam from the Sahara. While neither of these systems can be said to be truly indigenous to the sub-region, the Quranic schools were introduced much earlier, from about the 15<sup>th</sup> century and lack the taint of postcoloniality. However due to the reluctance of Muslim leaders in the north to entertain anything brought to them from Christian missionaries, ‘formalised’ schooling was not established in the north of Nigeria till about the 1900s. This lends some local credence to indigenous aversion to ‘western’ education; many instinctively realise the multiplicity of uses of education. It was the practice of colonial educators to exclude African cultures from education in order to achieve some form of uniformity.<sup>110</sup> This was done however, by replacing the diversity of cultures with a single imported ideology; this has been blamed for African loss of self-respect and patriotism.<sup>111</sup> Most of the curricular is imbued with Eurocentric learning, European history rather than African, European philosophers rather than African. The perspectives are also non-African. African school-children are taught that Mungo

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<sup>108</sup> Abdi, "Intensive Globalizations," 358.

<sup>109</sup> Daniel Bell, "The East Asian Challenge to Human Rights: Reflections on an East West dialogue." *Human Rights Quarterly* 18, no. 3 (1996):656 – 658

<sup>110</sup> Woolman, "Educational Reconstruction", 27

<sup>111</sup> Ibid., 29



Park discovered the River Niger. Yet the River was not lost to the African who traded on its shores, fished in its shallows or travelled down its waterways, for her there was no discovery.

By not incorporating indigenous, perspectives, knowledge and systems into formalised (internationally recognised) systems, indigenous peoples' rights to self-determination are not fully acknowledged, thus recolonising and reproducing the colonised African mind, depriving the world of a wider range of ways of knowing, pedagogy and epistemologies.<sup>112</sup> Therefore, in order to promote RtE in communities and states that have specific cultures and systems of indigenous education, and adopt the canopy approach of a right to a project of life, the needs of indigenous identity should be married with the requirements of good education. Education as imagined by the CDESCR is for the full development of the human personality of all people all over the world. This should have at its core, basic literacy and numeracy skills, as well as the unbiased awareness of science, religion and history. Appropriating culture provides a pragmatic solution to the promotion of RtE, and is a conceptually sound way to bring the benefits of education to the target population.

RtE specifically and human rights cannot be promoted if the people whose human rights we wish to promote are not engaged with or understood. Education is not entirely beneficial if it becomes a means by which a person's identity, culture and language becomes obscured. Education is meant for the FULL development of the human person – the mind, the body, the heart and the soul. Nelson Mandela once said *'If you talk to a man in a language he*

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<sup>112</sup> Angayuqaq O. Kawagley and Ray Barnhardt. "Education Indigenous to Place: Western Science Meets Native Reality." (1998) <http://files.eric.ed.gov/fulltext/ED426823.pdf> 10; Zulu, "Critical Indigenous African Education," 36; Abdi, "Intensive Globalizations," 352, 358; Yvonne M. Hebert, and Ali A. Abdi. "Critical Perspectives On International Education: Redefinitions, Knowledge-making, Mobilities and Changing the world," in *Critical Perspectives on International Education*, ed. Ali A Abdi (SensePublishers, 2013), 15; Dalene Swanson, "The Owl Spreads its Wings: Global and International Education within the Local from Critical Perspectives." in *Critical Perspectives on International Education*, ed. Ali A Abdi (SensePublishers, 2013), 338

*understands, that goes to his head. If you talk to him in his language... that goes to his heart.*<sup>113</sup>

Education that only goes to the mind is no education at all.

## **Conclusion**

This article has explored how the categorisation of human rights disregards the practicalities of human rights implementation and deprivation. Focusing specifically on the state of education in Nigeria and sub-Saharan Africa, it is proposed that more robust and inclusive approaches need to be taken to implement human rights fully. A right to a project of life is an ideal solution where the mechanism of state is weak, violators of human rights are non-state and cross-border and the manner of violation is multifaceted and combined with other rights. Where the violation is more unidimensional, no recourse to a project of life would be necessary. The indicators of the violation of the macro-level right to harbour a project of life, should subsume the indicators of the micro level RtE. Account should also be taken on the ability of various forms of education to isolate people from their identity. This isolation could motivate violent resistance to the promotion of RtE, as is the case with Boko Haram. Nevertheless, any framework designed to functionally appropriate cultural and indigenous modes of education in the promotion of RtE would have to resolve, among other things, the tension between traditional views and IHRL, especially concerning women's rights and universal human rights norms.<sup>114</sup> These cannot be resolved without actually engaging with culture. Admittedly the activities of BH suggest solutions that involve the security services primarily. Nevertheless, it is the contention of this author that the root of the problem and its solution lies much farther back...beyond 1960, even beyond 1500.

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<sup>113</sup> <http://www.bbc.co.uk/worldservice/learningenglish/movingwords/shortlist/mandela.shtml>

<sup>114</sup> Adjami, "African Courts", 164-165,

## Bibliography

Abdi, Ali A. "Intensive Globalizations of African Education." In *Critical perspectives on international education*, edited by Abdi, Ali A. 349-362. SensePublishers, 2013.

Adegbija, Efurosibina. "Saving Threatened Languages in Africa: A case study of Oko." In *Can Threatened Languages Be Saved?* edited by Joshua A. Fishman, 284-308. Clevedon UK: Multilingual Matters Inc. 2001.

Adeniji-Neill, Dolapo. "Omólúàbí: The Way of Human Being: An African Philosophy's Impact on Nigerian Voluntary Immigrants' Educational and Other Life Aspirations." *Ìrìnkèrindò* (2011): 1

Adjami, Mirna E. "African Courts, International Law, and Comparative Case Law: Chimera or emerging human rights jurisprudence." *Michigan Journal International Law* 24 (2002): 103.

Agbakwa, Shedrack C. "Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights." *Yale Human Rights & Development Law Journal* 5 (2002): 177.

Alexandrowicz, Charles H. "New and Original States: The Issue of Reversion to Sovereignty." *International Affairs* 45, no. 3 (1969): 465-480.

Amnesty International, "Keep Away From Schools or We'll Kill You: right to education under attack in Nigeria", (Index: AFR/44/19/2013), October 2013

———. "“Our Job is to Shoot, Slaughter and Kill’: Boko Haram's reign of terror in north east Nigeria”, AFR 44/1360/2015, 13 April 2015

An-Na'im, Abdullahi Ahmed. "Problems of Universal Cultural Legitimacy for Human Rights." *Human Rights in Africa: Cross-cultural perspectives* (1990): 331-368.

Batibo, Herman. *Language Decline and Death in Africa: Causes, consequences, and challenges*. Multilingual Matters, 2005.

Beeckman, Katrien. "Measuring the Implementation of the Right to Education: educational versus human rights indicators." *The International Journal of Children's Rights* 12, no. 1 (2004): 71-84.

Beiter, Klaus Dieter. *The Protection of the Right to Education by International Law*. BRILL, 2005.

Bell, Daniel. "The East Asian Challenge To Human Rights: Reflections on an East West dialogue." *Human Rights Quarterly* 18, no. 3 (1996): 641-667.

Birnbaum, Robert. "No world-class university left behind." *International Higher Education* 47 (2015).

Bravmann, René A. *Islam and Tribal Art in West Africa*. No. 11. CUP Archive, 1980.

Bruce-Wallace, Nii Lante. "Africa and International Law—the Emergence to Statehood." *The Journal of Modern African Studies* 23, no. 4 (1985): 575-602.

CESCR General Comment No.13: The right to education (Article 13), 8 December 1999, E/C.12/1999/10

Chothia, Farouk. "Who are Nigeria's Boko Haram Islamists?" 4 May 2015. <http://www.bbc.co.uk/news/world-africa-13809501>

- Cobbah, Josiah AM. "African Values and the Human Rights Debate: an African perspective." *Human Rights Quarterly* 9, no. 3 (1987): 309-331.
- Coomans, Fons. "Clarifying the Core Elements of the Right to Education." *Framework* 10 (1988): 214-248.
- Cranston, Maurice. "Are There Any Human Rights?" *Daedalus* 112, no. 4 (1983): 1-17.
- Crowder, Michael. *West Africa under Colonial Rule*. Hutchinson, London, 1968.
- . *Colonial West Africa: Collected Essays*. Psychology Press, 1978.
- Davidson, Basil. *West Africa before the Colonial Era: a history to 1850*. Routledge, 1998.
- Diop, Cheikh Anta. *Precolonial Black Africa*. Chicago Review Press, 1988.
- Donnelly, Jack. "Cultural Relativism and Universal Human Rights." *Human Rights Quarterly*, 6, no. 4 (1984): 400-419.
- . *Universal Human Rights in Theory and Practice*. Cornell University Press, 2013.
- Eleanor Goldberg, "Here's Who's Helping Hundreds of Pregnant, Rescued Boko Haram Kidnapping Victims," *Huffington Post*, last modified 05 June 2015. [http://www.huffingtonpost.com/2015/05/05/boko-haram-pregnant-victims\\_n\\_7215792.html](http://www.huffingtonpost.com/2015/05/05/boko-haram-pregnant-victims_n_7215792.html)
- Englebert, Pierre. "Pre-Colonial Institutions, Post-Colonial States, and Economic Development in Tropical Africa." *Political Research Quarterly* 53, no. 1 (2000): 7-36.
- Freeman, Michael. "The Philosophical Foundations of Human Rights." *Human Rights Quarterly*, 16, no.3 (1994): 491-514.
- Hall, Bruce S. "The Question of 'Race' in The Pre-Colonial Southern Sahara." *Journal of North African Studies* 10, no. 3-4 (2005): 339-367.
- Hallett, Robin. *Africa since 1875: A modern history*. University of Michigan Press, 1974.
- Hammarberg, Thomas. "How the Khmer Rouge tribunal was agreed: discussions between the Cambodian government and the UN." *Searching for the truth Documentation Center of Cambodia* (2001). [http://www.dccam.org/Tribunal/Analysis/How\\_Khmer\\_Rouge\\_Tribunal.htm](http://www.dccam.org/Tribunal/Analysis/How_Khmer_Rouge_Tribunal.htm)
- Hebert, Yvonne M., and Ali A. Abdi. "Critical Perspectives On International Education: redefinitions, knowledge-making, mobilities and changing the world." In *Critical Perspectives on International Education*, edited by Ali A. Abdi, 1 – 41. SensePublishers, 2013.
- Hinz, Manfred *Human Rights Between Universalism And Cultural Relativism? The Need for Anthropological Jurisprudence in the Globalising World*, (2009)
- Jackson, Robert H. "Quasi-states, dual regimes, and neoclassical theory: international jurisprudence and the Third World." *International Organization* 41, no. 4 (1987): 519-549.
- Kabasakal Arat, Zehra F. "Forging a Global Culture of Human Rights: Origins and prospects of the international bill of rights." *Human Rights Quarterly* 28, no. 2 (2006): 416-437.
- Kalantry, Sital, Jocelyn E. Getgen, and Steven Arrigg Koh. "Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A focus on the right to education in the ICESCR." *Human Rights Quarterly* 32, no. 2 (2010): 253-310.

- Kawagley, Angayuqaq Oscar, and Ray Barnhardt. "Education Indigenous to Place: Western Science Meets Native Reality." (1998). <http://files.eric.ed.gov/fulltext/ED426823.pdf>
- Leckie, Scott. "Another Step towards Indivisibility: Identifying the key features of violations of economic, social and cultural rights." *Human Rights Quarterly* 20, no. 1 (1998): 81-124.
- Maiangwa, Benjamin, and Daniel Agbiboa. "Why Boko Haram kidnaps women and young girls in north-eastern Nigeria." *Conflict Trends* 3 (2014): 51-56.
- McCarthy, Cameron, Michael Giardina, Susan Juanita Harewood, and Jin-Kyung Park. "Afterword: Contesting culture: Identity and curriculum dilemmas in the age of globalization, postcolonialism, and multiplicity." *Harvard Educational Review* 73, no. 3 (2003): 449-465.
- Melish, Tara J. "The Inter-American Court of Human Rights: Beyond Progressivity." In *Social Rights Jurisprudence: emerging trends in international and comparative law*, edited by Malcolm Langford. Cambridge University Press, 2008.
- Mutua, Makau Wa. "Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties, The." *Virginia Journal of International Law* 35 (1994): 339.
- Nolan, Aoife. "Addressing Economic and Social Rights Violations by Non-State Actors through the Role of the State: A comparison of regional approaches to the 'obligation to protect'." *Human Rights Law Review* 9, no. 2 (2009): 225-255.
- Ntarangwi, Mwenda. "The Challenges of Education and Development in Post-Colonial Kenya." *Africa Development* 28, no. 3-4 (2003): 211-228.
- Nyanchoga, Samuel A. "Politics of Knowledge Production in Africa: A critical reflection on the idea of an African university in sustainable development." *Developing Country Studies* 4, no. 18 (2014): 57-66.
- Onuoha, Freedom C. "The Islamist challenge: Nigeria's Boko Haram crisis explained." *African Security Review* 19, no. 2 (2010): 54-67.
- Scott, Craig. "Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights." *Osgoode Hall Law Journal* 27 (1989): 769.
- . "Reaching Beyond (without abandoning) The Category of 'Economic, Social and Cultural Rights'" *Human Rights Quarterly* 21, no 3 (1999): 633-660.
- Shalita, Nicholas. "The Sudan Conflict (1983–)." *The True Cost of Conflict: Seven Recent Wars and Their Effects on Society*. London (1994).
- Shuriye, Abdi O. and Dauda Sh Ibrahim. "Timbuktu Civilization and its Significance in Islamic History." *Mediterranean Journal of Social Sciences* 4, no. 11 (2013): 696.
- Smith, Rhona. *Textbook on International Human Rights*. Oxford University Press, 2007.
- Stride, George T., and Caroline Ifeka. *Peoples and Empires of West Africa: West Africa in history, 1000-1800*. Africana Pub. Corp, 1971.
- Swanson, Dalene. "The Owl Spreads its Wings: Global and International Education within the Local from Critical Perspectives " In *Critical Perspectives on International Education*, edited by Ali A. Abdi, 333-347. SensePublishers, 2013.

United Nations General Assembly, *Declaration on the Right to Development*, 4 December 1986, A/RES/41/128

United Nations Office for West Africa, "Urbanization and Insecurity in West Africa: Population Movements, Mega Cities and Regional Stability" UNOWA Issue Papers, Published by the United Nations Office for West Africa. Published October 2007.

Vierdag, Egbert W. "The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights." *Netherlands Yearbook of International Law* 9 (1978): 69-105.

Webster, J. B., and A. A. Boahen with Tidy, M. *The Revolutionary Years: West Africa since 1800*. Essex, Longman, 1980.

Woolman, David C. "Educational Reconstruction and Post-Colonial Curriculum Development: A comparative study of four African countries." *International Education Journal* 2, no. 5 (2001): 27-46.

Zulu, Itibari M. "Critical Indigenous African Education and Knowledge." *Journal of Pan African Studies* 1, no. 3 (2006): 32 – 49.